



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

JUL - 1 2008

Brian G Svoboda
Kate Sawyer Keane
Perkins Coie LLP
607 Fourteenth Street, NW
Washington, D C 20005-2011

Re MUR 5835
Democratic Congressional
Campaign Committee

Dear Mr Svoboda and Ms Keane

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, on October 5, 2006, the Federal Election Commission found reason to believe that an unknown respondent violated 2 U S C § 441d and instituted an investigation in this matter. Based upon that investigation, on December 17, 2007, the Commission substituted the name of your clients, the Democratic Congressional Campaign Committee and Brian Wolff, in his official capacity as treasurer, in place of "unknown respondent" in the Commission's previous finding.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation has occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

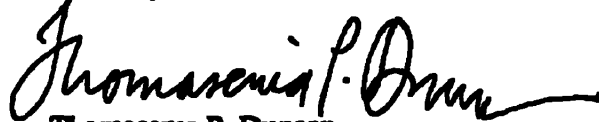
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You may also request an oral hearing before the Commission. See Commission's "Policy Statement Establishing a Pilot Program for Probable Cause Hearings," 72 Fed Reg 7551 (Feb 16, 2007). Hearings are voluntary, and no adverse inference will be drawn by the Commission based on a respondent's decision not to request such a hearing. Any request for a hearing must be submitted along with your reply brief and must state with specificity why the hearing is being requested and what issues the respondent expects to address.

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Thomas Andersen, Acting Assistant General Counsel, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomasenia P. Duncan", with a long horizontal flourish extending to the right.

Thomasenia P. Duncan
General Counsel

Enclosure
Brief

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Democratic Congressional Campaign) MUR 5835
Committee and Brian Wolff, in his)
official capacity as treasurer)

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On October 5, 2006, the Commission found reason to believe that an unknown respondent, also known as the unidentified client of Quest Global Research, Inc , violated 2 U S C § 441d of the Federal Election Campaign Act of 1971, as amended ("the Act") The finding was based on information indicating that the unknown respondent made disbursements for two sets of phone banks, but did not include a disclaimer on the calls The Office of General Counsel undertook an investigation that revealed that the Democratic Congressional Campaign Committee was the unknown respondent On December 17, 2007, the Commission substituted the name of the Democratic Congressional Campaign Committee and Brian Wolff, in his official capacity as treasurer ("the DCCC"), in place of "unknown respondent" in the Commission's previous reason to believe finding, and notified the DCCC of its finding The DCCC, through counsel, submitted a response to the Commission's reason to believe finding that confirmed that the DCCC made disbursements for the two sets of phone banks in question Based on the information before the Commission, we are prepared to recommend that the Commission find probable cause to believe that the DCCC violated 2 U S C § 441d

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II. STATEMENT OF FACTS

The DCCC hired a polling and voter identification company, Anzalone Laszt Research, Inc., to conduct two telephone polls in October 2004. The DCCC paid a total of \$20,000 for the polls and reported the disbursements as coordinated party expenditures for Leonard Boswell, the incumbent candidate in Iowa's 3rd District Congressional race in the 2004 general election.

Anzalone subcontracted the first poll to a vendor, Communications Center Inc. ("CCI"). CCI asked questions regarding demographics, the likelihood a voter would vote for a Democratic or Republican party candidate, the voter's impression of the Presidential and Congressional candidates, and the voter's likelihood to vote for Boswell's opponent, Stan Thompson, after hearing several statements about Thompson.¹ The poll did not contain a disclaimer disclosing who paid for the call, and did not state whether it was authorized by a candidate. Information obtained during the Commission's investigation indicates that CCI completed 550 calls between October 12 and 14, 2004 for which it billed Anzalone, and Anzalone in turn billed the DCCC \$10,000 for the calls.

The second poll was subcontracted to another vendor, Quest Global Research, Inc. ("Quest"). Like the preceding poll, this poll sought general demographic information, the likelihood the voter would choose a major party candidate, and impressions of the Presidential

¹ For example, statements from the first poll included

"Stan Thompson supported the Republican Prescription Drug Program that was called a "big win" for the drug industry by the Wall Street Journal. The new program is too confusing, doesn't guarantee lower drug prices and blocked access to safe and affordable drugs from Canada."

"Stan Thompson supports free trade agreements that allow the use of child labor by third world countries, undercutting American jobs. Thompson was quoted saying the "child labor is no reason for impeding [sic] trade promotion."

"Stan Thompson supports George Bush's economic policies that create tax incentives for American companies to ship their jobs overseas."

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1 and Congressional candidates This time, the poll inquired about the voter's likelihood to vote
2 for Stan Thompson after hearing only one statement

3 Stan Thompson opposes additional spending in Afghanistan [sic] that will
4 help in the hunt and capture of Osama Bin Laden and the fight against
5 terrorism
6

7 The poll comprised at least 600 telephone calls and took place between October 21 and
8 25, 2004 Quest billed Anzalone for 600 calls, but information obtained during the
9 Commission's investigation indicates that Quest completed 800 calls in connection with the poll
10 Anzalone billed the DCCC \$10,000 for the second poll The poll did not contain a disclaimer
11 disclosing who paid for the call, and did not state whether it was authorized by a candidate

12 The DCCC's response to the reason to believe finding confirms that more than 500 calls
13 were made within a thirty (30) day period, and that the DCCC spent approximately \$10,000 on
14 the first set of calls and approximately \$10,000 on the second set of calls Therefore, it appears
15 that the DCCC spent a total of \$20,000 on both sets of calls

16 **III. LEGAL ANALYSIS**

17 The Act requires that political committees "making a disbursement for the purpose of
18 financing any communication through any other type of general public political advertising"
19 must place a disclaimer in the communication 2 U S C § 441d Furthermore, the regulations
20 state that any "public communication" for which a political committee makes a disbursement
21 must contain a disclaimer 11 C F R § 110.11

22 A public communication includes a communication by telephone bank to the general
23 public 11 C F R § 100.26 A telephone bank means that more than 500 calls of an identical or
24 substantially similar nature were made within a 30-day period 11 C F R § 100.28 The
25 Explanation and Justification discussing the disclaimer regulations implementing the 2002

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1 Bipartisan Campaign Reform Act ("BCRA") amendments to the Federal Election Campaign Act
2 of 1971, as amended ("the Act"), also make clear that a telephone bank is considered a type of
3 general public political advertising. See 67 Fed. Reg. 76962, 76963 (Dec. 13, 2002) ("each form
4 of communication specifically listed in the definition of 'public communication,' as well as each
5 form of communication listed with reference to a 'communication' in 2 U.S.C. 441d(a), must be
6 a form of 'general public political advertising'"). Therefore, any candidate, political committee
7 or their agent(s) making any disbursement for telephone bank calls must include a disclaimer on
8 the calls. See MUR 5587R (Vitter).²

9 The disclaimer must be presented in a "clear and conspicuous manner" in order to give
10 the listener "adequate notice of the identity of the person or political committee that paid for and,
11 where required, that authorized the communication." 11 C.F.R. § 110.11(c)(1). With respect to
12 coordinated party expenditures, disclaimers on communications paid for by a political party
13 committee must identify the political party committee as the person who paid for the
14 communication, and must state that the communication was authorized by the candidate or the
15 candidate's authorized committee. 11 C.F.R. § 110.11(d)(1)-(2).

16 In sum, disclaimers are required on any telephone bank communications, as defined by
17 Commission regulations, for which a political committee makes a disbursement. The polls in

² The facts in the present matter are very similar to those in MUR 5587R (Vitter). There, the Commission found probable cause to believe that the David Vitter for U.S. Senate Committee violated 2 U.S.C. § 441d in connection with two sets of telephone bank calls prior to the 2004 General Election. The first set of calls consisted of advocacy and voter identification calls in which the caller stated that he or she worked for the committee. The calls did not, however, clearly state that the David Vitter for U.S. Senate Committee paid for the communication. The second set of calls, referred to as the "Undecided" calls, consisted of calls intended to elicit voter preferences in the Senatorial race. These calls also did not clearly state that they were paid for by the Vitter committee. Both sets of calls consisted of more than 500 calls of an identical or substantially similar nature made within a 30-day period, and therefore the Commission determined that they were public communications subject to the Act's disclaimer requirements. The Commission reached a conciliation agreement with the Vitter committee in which they agreed to pay a \$25,000 civil penalty to settle the matter.

question are telephone banks because they each comprised more than 500 calls of a substantially similar nature that were made within a 30-day period. The DCCC paid for both sets of calls and reported them as coordinated party expenditures. Neither set of calls contained any disclaimer. Therefore, those calls violated the disclaimer provisions of the regulations and the Act.

Accordingly, we are prepared to recommend that the Commission find probable cause to believe that the DCCC violated 2 U.S.C. § 441d.

IV. GENERAL COUNSEL'S RECOMMENDATIONS

- 1 Find probable cause to believe that the Democratic Congressional Campaign Committee and Brian Wolff, in his official capacity as treasurer, violated 2 U.S.C. § 441d.
- 2 Approve the appropriate letter.

7/1/2008
Date

Thomasenia P. Duncan
Thomasenia P. Duncan
General Counsel

K.M. Guth
Kathleen M. Guth
Acting Deputy Associate General Counsel
for Enforcement

Thomas J. Andersen
Thomas J. Andersen
Acting Assistant General Counsel